

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket № 14282US02)**

In the Application of:

Jeyhan Karaoguz, et al.

Serial No. 10/675,654

Filed: September 30, 2003

For: MIGRATION OF STORED MEDIA
THROUGH A MEDIA EXCHANGE
NETWORK

Examiner: Scott B. Christensen

Group Art Unit: 2444

Confirmation No. 5801

Electronically filed on 14-OCT-2009

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on July 16, 2009 ("Final Office Action"). The Applicant also requests review of the arguments stated on page 2 of the Advisory Office Action mailed on October 5, 2009 ("Advisory Office Action"). No amendments are being filed with this request.

This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

REMARKS

The present application includes pending claims 1-42 all of which have been rejected. Claims 1-4, 7-14, 17-24 and 27-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over "The Gnutella Protocol Specification v0.4" ("Gnutella") in view of USP 5,526,358 ("Gregerson"). Claims 5-6, 15-16 and 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gnutella in view of Gregerson, and further in view of USPP 2002/0194309 ("Carter"). The Applicant respectfully submits that the claims define patentable subject matter. The Applicant also respectfully traverses these rejections at least for the following reasons:

I. Examiner's Response to Arguments in the Advisory Office Action

The Examiner states the following in the Advisory Office Action:

It is noted that the instant claim only requires that the initiation of the detection is without user intervention, but provides no detail on how the detection is initiated. (1)

In the case of the instant rejection, the rejection relies on the concept of a "persistent query." A persistent query, as recognized by a person of ordinary skill in the art, is one where a query is initiated in such a way as to periodically execute the query. While the persistent query, itself, may be initiated by a user, each subsequent execution of the query is performed "automatically and without user intervention" until a certain condition is met to halt the persistent query, which may include a certain amount of time passing, or the item being found. (2)

Thus, in the instant rejection, while the persistent query, itself, is user initiated, each execution of the persistent query after it is initiated is not user initiated, but rather is initiated automatically and without user intervention, where each execution of the persistent query results in the initiation of the detection and the detecting of the media, data, and/or service. (3)

The Applicant respectfully disagrees (emphasis and numbering added). With regard to Examiner's argument (1), the Applicant points out that claim 1 indeed provides sufficient details on how the detection is initiated. Namely, such detection is initiated automatically and without user intervention, which is not disclosed by the references, as explained below. In fact, **the Examiner has even conceded that Gnutella's persistent query is initiated by a user** (see underlining in argument (2) above).

In reference to Examiner's arguments (2) and (3) above, the Applicant points out that how "each subsequent execution of the query is performed" is irrelevant in these circumstances. The issue here is how the query is initiated, not how it is subsequently performed after its initiation.

Applicant's claim 1 clearly recites how detection is initiated (i.e., automatically and without user intervention), and such features are not disclosed by the reference (as also conceded to by the Examiner).

The Applicant maintains all arguments stated in the 09/15/2009 response.

II. The Proposed Combination of Gnutella and Gregerson Does Not Render Claims 1, 11, 21, and 32 Unpatentable

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Gnutella and Gregerson does not disclose or suggest at least the limitation of "automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network," as recited by the Applicant in independent claim 1.

The Final Office Action states the following:

With regard to claim 1, Gnutella discloses a method for communicating information in a distributed media network, the method comprising:

automatically detecting initiating detecting and detecting whether one or more of new media, data and/or service within the distributed network is available (Gnutella: Page 1, "Query". The "Query" descriptor is used for finding media that is available on the network. Further, the actual act of detecting is performed automatically. Even if the user initiates the act of detecting with a query, the act itself is performed automatically and without user intervention.);

migrating said newly available one or more of new media, data and/or service to at least a first media processing system with the distributed media network (Gnutella: Page 1, "Push". "migrating" is interpreted as being equivalent to transfer (See specification paragraph [0011], where transfer and migrate seem to be interchangeable.); and

storing said migrated newly available one or more of new media, data and/or service at said least a first media processing system (Gnutella: Page 7. The file is downloaded, which means that the file is stored at the destination.).

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

However, persistent query's, such as that disclosed in Gregerson, are very well known in the art. In Gregerson, a "Persistent Find Query" is utilized to detect the availability of a resource as soon as it is available in the network (Gregerson: Column 12, lines 29-41). For a persistent query, a user initiates the initial query. If the item being searched for is not found, the system automatically, and without user intervention, searches for the item again after

some interval or in a continuous fashion. Thus, any new items would be discovered when the search executes after the new item appears in the system.

Thus, it would have been obvious to modify the teachings of Gnutella with persistent queries, such as that in Gregerson.

See Office Action at pages 6-8 (emphasis added). The Final Office Action continues to rely for support on Gnutella's Query descriptor. The Applicant points out that the Query descriptor of the Gnutella protocol is used only by a user for purposes of searching a local data set by the servant that receives the Query descriptor. See Gnutella at page 1. More specifically, the Query descriptor is used to locate a match (and a QueryHit) against existing data within the local data set of the specific servant. The Query descriptor, as well as any of the remaining Gnutella descriptors, is not used (and cannot be used) for purposes of initiating detection and detecting whether media, data, and/or service become newly available.

Furthermore, a user has to specifically designate the search criteria (or the search string) for purposes of using the Query descriptor. In other words, the Query descriptor, as well as any other descriptor of the Gnutella protocol, requires user participation (the user has to initiate the query) and, therefore, cannot be used for purposes of "automatically and without user intervention, initiating detection and detecting" newly available media. Obviously, Gnutella requires the user to initiate the detection, and no detection can be performed without such user intervention.

The Examiner, in the above citation, concedes the following:

Gnutella does not disclose expressly initiating detecting without user intervention whether the one or more of new media, data, and/or service becomes newly available.

See the Final Office Action at page 7. The Examiner then relies for support on col. 12, lines 29-41 of Gregerson, which describes the "persistent query." The Applicant is not certain why the Examiner is using Gregerson since its "persistent query" (similarly to Gnutella's Query) is initiated by the user. In fact, the Examiner concedes that for a persistent query, "a user initiates the initial query". See Final Office Action at page 7. Obviously, without the user initiating the query process, there will be no detection taking place under both Gnutella and Gregerson.

Therefore, the Applicant maintains that the combination of Gnutella and Gregerson does not (and cannot) disclose or suggest at least the limitation of "automatically and without user intervention, initiating detection and detecting whether one or more of new media, data and/or service becomes newly available within the distributed network," as recited by the Applicant in independent claim 1.

Accordingly, the proposed combination of Gnutella and Gregerson does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable. Independent

claims 11, 21 and 32 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 11, 21 and 32 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1. The Applicant also maintains all arguments regarding allowability of the dependent claims, as stated in the 09/15/2009 response.

III. Conclusion

The Applicant respectfully submits that claims 1-42 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: 14-OCT-2009

By: /Ognyan I. Beremski/
Ognyan Beremski, Reg. No. 51,458
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100
(OIB)